Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JEROME MURRAY,
Petitioner,

v.

LINDA LEE SMILTNEEK,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE 95B JUDICIAL DISTRICT COURT
FOR THE STATE OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI

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35pp

QUESTION PRESENTED FOR REVIEW

1. Whether an unscheduled debt owed by Chapter 7 debtors was discharged in no-asset case, even though creditors did not learn of case until after entry of discharge order.

2. Did the debt which was otherwise dischargeable, become nondischargeable as result of debtors' failure to schedule the debt.

PARTIES TO THE PROCEEDINGS

Petitioner

The petitioner is Jerome Murray, an individual and has no corporate affiliations.

Respondent

The respondent, Linda Lee Smeltneek, an individual.

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AUTHORITIES

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Petitioner, Jerome Murray, respectfully asks that a writ of certiorari be issued to review the judgment of the Small Claims Court of the 95B Judicial District Court for the County of Dickinson, State of Michigan.

OPINION BELOW

The opinion of the Small Claims Court for the 95th Judicial District for the County of Dickinson, State of Michigan is not published but can be obtained by requesting a copy of Small Claims Trial Volume I & II from Karen M. Hewett, CER 003344, Certified Electronic Recorder, 95B District Court Recorder, Courthouse, P.O. Box 609, Iron Mountain Michigan 49801 or by calling (906) 774-0506.

STATEMENT OF JURISDICTION

The decision of the Small Claims Court was entered on November 2, 1999. Said decision is a final judgment. And pursuant to the final judgment rule, the Supreme Court of the United States has jurisdiction pursuant to 28 U.S.C. §1257.

STATUTORY PROVISIONS INVOLVED

11 U.S.C. 524 provides in relevant part: "(a) A discharge in a case under this title– (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover, or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and . . . ."

STATEMENT OF THE CASE

The fundamental question in this case is whether a debt has to be listed on a debtor's bankruptcy schedules in order for the debt to be discharged, therefore providing the debtor the privilege of a discharge and the immunity from further collection efforts of his creditors as provided and guaranteed by 11 U.S.C. 524

A. Background of the November 2, 1999 Judgment

The Petitioner operated a GM dealership, selling new General Motors vehicles. The Respondent purchased a vehicle from Petitioner and also purchased a warranty on the vehicle. The warranty is the subject of the dispute. Petitioner went out of business, and filed for bankruptcy protection on May 22, 1996 receiving his discharge on August 21, 1996. On August 13, 1999 Respondent filed an action, a commencement of an action, that involved the employment of process, in the Small Claims division of the 95B Judicial District Court for the County of Dickinson, State of Michigan, Case No. 99-1908-SC, for the purpose of collecting a pre bankruptcy debt. The Petitioner, in open court on the record, notified the Respondent and the court of his bankruptcy discharge. The Respondent, upon discovering of the Petitioners bankruptcy, failed to stay the proceedings and continued the action to collect the debt. The Court found that due solely to Defendant's failure to list the Plaintiff's debt in his schedules, the debt was nondischargable, and judgment issued on November 2, 1999 for One Thousand Forty Five and 55/100 Dollars ($1,045.55).

B. Proceedings Below

On August 13, 1999, Respondent filed an action in the Small Claims division of the 95B Judicial District Court for the State of Michigan, alleging that the claim arose on November 11, 1995 and that: "When I purchased a 96 Pont. Grand Am from Jerome Murray, who owned La Freniere Motors in Norway Mich. I gave him $800 for a extended warranty for my car to cover it to 75,000. He never sended it in too–GM Warranty Plan. There-fore I never had no warranty on my car which I paid for." A hearing was scheduled and heard on September 21, 1999. The Petitioner and the Respondent appeared. The Respondent gave testimony on the facts alleged. September 21, 1999 Transcript Page 3 Lines 7-14. The Petitioner notified the Respondent, and the court of his bankruptcy filing. September 21 Transcript Pages 3-4 Lines 16-25 and 1-2 respectively. The Court questioned the Petitioner as to whether or not the Petitioner listed the Respondent on his bankruptcy schedules. September 21, 1999 Transcript Page Lines 11-13; and again in the November 2 Transcript Line 12. The Petitioner answered that he did not list the Respondent. September 21 Transcript Page 4 Line 14; and again in the November 2 Transcript on Page 3 Line 13. The Petitioner advised the court that he had a decision from another court that he felt would resolve the issue. November 2, 1999 Transcript Page 3 Lines 6-11, and Lines 16-18. The court failed to review the evidence proffered by the Petitioner. The Court after concluding the hearing found for the Respondent saying "And so, therefore, I'm going to have to hold him liable for this [referring to the Petitioner]. November 2, 1999 Transcript Page 7 Lines 19-20. The reason because the Petitioner did not list the Respondents debt in his bankruptcy, and in not doing so the debt was not dischargable: "This debt is not dischargable in bankruptcy, as she paid it to you

directly and she was not listed as a creditor in the bankruptcy." November 2, 1999 Transcript Page 7 Lines 20-21.

AUTHORITY FOR GRANTING WRIT

Certiorari is appropriate in this case under Sup. Ct. Rule 10 (b).

REASONS FOR GRANTING THE WRIT

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE HOLDING OF THE COURT BELOW CONFLICTS WITH THE AUTHORITY IN THE 6TH CIRCUIT COURT OF APPEALS DECISION WHICH HELD THAT AN UNSCHEDULED DEBT OWED BY A CHAPTER 7 DEBTOR IS DISCHARGED IN NO-ASSET CASE, EVEN THOUGH CREDITORS DID NOT LEARN OF CASE UNTIL AFTER ENTRY OF DISCHARGE ORDER.

The case of In re Madaj, 149 F.3d 467 (6th Cir. 1998) is incorporated by this reference.

" If the Creditors before us had acquired knowledge of the bankruptcy prior to the entry of the discharge order, the debt would not have been excepted from discharge because the Creditors had actual knowledge in time to file a proof of claim. Their learning of the bankruptcy after the entry of the discharge order did not transmogrify the debt into one that is excepted from discharge under some provision of the Code other than § 523(a)(3)(A). Whether or not the Debtors reopen their case and amend their schedules to list this debt, there

will still be no date by which proofs of claim would have to be filed in order to be timely; because the Creditors have actual knowledge of the bankruptcy, § 523(a)(3)(A) does not except this debt from discharge. Hence, the reopening of the Debtors' Chapter 7 case to permit the amendment of the schedules can have no effect whatsoever. The debt in question, listed or not, is discharged." In re: Madaj, 149 F.3d 467 (6th Cir. 1998).

II

THE PETITION SHOULD BE GRANTED BECAUSE THE HOLDING BELOW CONFLICTS WITH THE AUTHORITY IN THE 6TH CIRCUIT COURT OF APPEALS DECISION THAT HELD THAT A DEBT OTHERWISE DISCHARGEABLE, CANNOT BECOME NONDISCHARGEABLE AS RESULT OF DEBTORS' FAILURE TO SCHEDULE THE DEBT.

"A debtor cannot change the nature of the debt by failing to list it in his petition and schedules. Section 523(a)(3)(A) excepts from discharge only those debts as to which a timely proof of claim cannot be filed because the debts were not listed and the creditor had neither notice nor actual knowledge of the bankruptcy in time to file a timely a proof of claim. In a no-asset Chapter 7 case, there is no date by which a proof of claim must be filed in order to be "timely." Whenever the creditor receives notice or acquires actual knowledge of the bankruptcy, he may file a proof of claim, that claim will be timely, and the fact that the debts were not listed becomes irrelevant. Section 523(a)(3)(A) simply provides no basis for excepting an unlisted debt from discharge if the creditor has actual knowledge such that he can file a proof of claim. And once the § 727 order of discharge is entered, all of the debtor's prepetition debts are either

discharged or they are not discharged; nothing the debtor does after the entry of the order of discharge can change the character of those debts. In re: Madaj, 149 F.3d 467 (6th Cir. 1998). Even if, as we shall assume for the sake of argument, the Debtors purposely failed to list the debt in an attempt to defraud the Creditors, this action did not (and could not) work some perverse alchemy to change the innocent loan into a fraudulent debt of the type that is covered by § 523(a)(2), (4) or (6) and therefore excepted from discharge pursuant to § 523(a)(3)(B). If the debt is to be excepted from discharge, it can only be excepted according to § 523(a)(3)(A). If the bankruptcy estate had any assets (i.e., if this were not a no-asset case) and if the Debtors' failure to list the ***472** debt had deprived the Creditors of their ability to timely file a proof of claim, then § 523(a)(3)(A) would, indeed, except the debt from discharge." Id.

CONCLUSION

For the reasons set forth herein, the Court's standards for granting certiorari, as set for in Sup. Ct. Rule 10 (a) are well met in this case. Consequently, the petitioner respectfully submits that the petition should be granted.

Respectfully submitted,

/s/_____
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APPENDIX A

State of Michigan
95B Judicial District

Judgment
Small Claims

Case No.
99-1908-SC

Court Address
Courthouse-P. O. Box 609-
Iron Mountain, MI 49801

Court Telephone No.
(906) 774-0506

Plaintiff's name and address

LINDA LEE SMILTNEEK
w-8079 Lot 16
Iron Mountain, MI 49801

v

Defendant's name and address

JEROME MURRY
1189 Langlade Ave.
Green Bay, WI 54304

☐ Judgement
For: Plaintiff

Against: Defendant

☐After trial

Damages	$1,007.80
Interest	$
Costs	$ 37.80
Other	-$
Judgement	$1,045.55 This judgment will earn interest at current statutory rates.

☐ A note or other written evidence of indebtedness has been fled with the clerk for cancellation.

IT IS ORDERED this judgment is granted and:
☐ 1. The defendant must pay the judgment to _____ _____ In installments of $_____
☐ Weekly ☐Bi-weekly ☐Monthly Starting _____ _____ until paid in full. No further proceedings to collect the judgement will issue as long as defendant(s) comply with this order.

☐ 2. If this judgement is not paid within 21 days from the date of the judgement, or if any installment payment plan is not approved by the court within this time, you must pay the judgement in full or disclose to the court and plaintiff, in writing (form DC 87), your place of employment and the location of your accounts in all banks, savings and loan associates, or credit unions.
☐ 3. Other:

11/2/99 (Signature on Original) P29262
Judge/Attorney Magistrate Bar No.
Michael J. Kusz

☐ An attorney magistrate's judgment is final unless appealed with 7 days.
Notice: if this judgment is not paid as ordered or within 21 days, you may be ordered into court for questioning regarding your assets, your property may be seized, or garnishment may issue after 21 days. When judgment is paid in full, plaintiff should file a signed satisfaction of judgement with the clerk, or defendant may file a motion for entry of an order of satisfaction.

CERTIFICATE OF MAILING

I certify that on this date a copy of this judgment was served on the parties indicated above by ordinary mail.

Date: 11/2/1999 Deputy Clerk: Connie Chicha

APPENDIX B

Iron Mountain, Michigan

Tuesday, September 21, 1999 - at about 8:14 a.m.

THE COURT: Linda Smiltneek Versus Jerome Murray. And this is a contested matter?

(Nods)

THE COURT: All right then to the two cases that are going to be heard this morning, I must advise the parties that by having this matter heard in small claims court, your are giving up certain rights that you are otherwise entitled to.

The includes your right to be represented by an attorney, your right to have jury determine any contested issues of fact, and your right to appeal any decision of the Court.

You would also be giving up your right to claim more than $1,750 in damages, but that does not apply to either claim as filed at this time.

Do you all understand then the rights that you would be waiving by having the matter heard in small claims court?

(All nod that they understand)

THE COURT: All right. Is there any party scheduled for hearing this morning then that wishes to have the matter removed from small claims to the regular civil division?

(No indication from anyone)

THE COURT: All right, hearing no response then, we'll proceed with Linda Smiltneek versus Jerome Murray.

All right again then, the plaintiff has the burden of proof and can therefore go first. And if you would raise your right hands at this time.

COURT RECORDER: Do you solemnly swear [or affirm] that the testimony you shall give will be the truth, the whole truth, and nothing but the truth, so help you God?

MS. SMILTNEEK: I do.

MR. MURRAY: I do.

THE COURT: You can be seated. You can proceed.

MS. SMILTNEEK: In November of 1995 I purchased a 95' Pontiac Grand Am from LaFreniere Motor Sales. I paid for the car. I paid $800 for an extended warranty. And the whole time I had this car, and I still have it, I never had a warranty. There's been a couple repair bills that I had to pay out of my pocket. I had no idea I didn't have no warranty until I

went–something happened to my car and I call General Motors, their protection plan, I talked to Edwards because that's where my car gets repaired at, and there was never no money sent in for an extended warranty.

THE COURT: All right. Response at this time?

MR. MURRAY: In all fairness to Linda- cause she's a pretty nice lady and she bought a car from me in good faith- there was a bankruptcy, LaFreniere Motor Company. The last day of business was December of '95. I have a discharge in I believe March of 96'. So I don't have any doubt that she may have a problem.

The procedure is when there is a warranty sold through a General Motors dealership, the funds are forwarded on to GMAC. And I do have discharge paperwork here showing that GMAC – I have dischargeable debts of over $10,000 which I'm sure a portion of that is the money that she paid for the warranty. I don't have a doubt in my mind that she may have a claim, but I think she's just got the wrong individual here.

First of all, it was a business that she's doing business with an not me personally. And I do have all my discharge papers in line here.

THE COURT: Well, does the $800 go to you, or does it go directly to GMAC?

MR. MURRAY: It goes right to GMAC.

THE COURT: So, basically, you're just a pass-though?

MR. MURRAY: Correct.

THE COURT: And did you in fact forward that money to GMAC?

MR. MURRAY: I was discharged of over $10,000. I really–I don't have any–

THE COURT: Okay. Well, a discharge only is effective against the parties who are actually listed I the bankruptcy. Did you list Linda Smiltneek as a creditor in the bankruptcy?

MR. MURRAY: No, I did not .

THE COURT: Okay. Then that discharge would be totally ineffective against her. It would only be effective against creditors listed. So the question remain: did GMAC receive the $800.?

MR. MURRAY: to my knowledge, yes

THE COURT: Okay, How–do you have any documentation that would prove that?

MR. MURRAY: The only thing I have is my discharge papers. I don't have access to any records from the garage anymore. They were all locked tight. I wasn't even allowed to even go on premises of the place. So I don't even really have anything to say that she does or she doesn't I really don't have anything. The only

thing I know is that at the close of business, there was some money owed to GMAC and I was dis–you know, discharged of all of that.

So my position on this is maybe she does have a claim, but I think she's after the wrong individual here.

THE COURT: Well, I guess that depends, I man, it could be, if the money went to GMAC; it may not be, if the money didn't go the GMAC. So you could still be held.

(Ms. Smiltneek raises her hand)

THE COURT: Yes?

MS. SMILTNEEK: Your Honor, I've talked to GMAC Protection Plan and they said their license was pulled to sell G. M. products. This was after the fact, after January 1st of '96.

THE COURT: Okay. But you bought it in November?

MS. SMILTNEEK: Right. In November, right. And I paid hi that money at this time.

THE COURT: In November?

MS. SMILTNEEK: In November. Here's my check. I've got my check. I borrowed money on a 90 day note.

THE COURT: Do you have it returned? Do you have the canceled check?

MS. SMILTNEEK: This is what I have here. This is what I paid him. It was altogether. This is come of my copies. Okay? This is what I have.

THE COURT: I understand that part. But do you have a canceled-- but you don't have a canceled check?

MS. SMILTNEEK: No. I couldn't get one.

THE COURT: You couldn't?

MS. SMILTNEEK: Mmm-mmm.

THE COURT: Why?

MS. SMILTNEEK: It was on microfilm or whatever and too many years have gone by. That's what they told me at the Credit Union when I asked for one. That's where I-

THE COURT: They should have it on microfilm.

MS. SMILTNEEK: I didn't get one. I talked to one girl there, and I didn't get one. This is where the $800.00 comes in. And he was the president of that company.

THE COURT: Well, I understand that but the question remains I guess, as to whether or not legal title to the $800 had passed to GMAC or remained with LaFreniere Motors.

MS. SMILTNEEK: Your Honor, this title and this–this–I didn't get my –the Niagara Credit Union where I financed my car, they didn't get the title. They were calling me for the title. The sales tax never got paid until months later. Mr. Phelps from the State of Michigan License Bureau was trying to track him down. And we tried to call him. I mean, we were looking for him. We didn't know–I–we–we thought my car was stolen for a while. I had no idea what was going on with this car.

THE COURT: Well, what I'm saying we're going to have to do at this point is, I think you're going to have to amend your suit to include not only Mr. Murray, but also to include GMAC. In other words, one or the other is liable.

MS. SMILTNEEK: Right.

THE COURT: The problem is, I can't determine on this record which of the two.

MS. SMILTNEEK: Okay.

THE COURT: So, what you're going to have to do is, I'm going to have to send you to Connie Chicha, and you're going to have to file an amended complaint adding GMAC as an additional party defendant.

MS. SMILTNEEK: Okay.

THE COURT: And then we'll have them served. And then when they come back, basically you're going to

have to let Jerry and them fight it out, because that's where it's at.

MR. MURRAY: Yeah. So I've got a Schedule F here, Creditors Holding Unsecured Priority claims, and I've got a total dollar amount. It's not broken down as to -lot of that was floor plan interest on the cars until they finally got around to me. And so-

THE COURT: Right. But unless you specifically list a creditor, how can you extinguish their interest? The bankruptcy requires that each particular unsecured creditor get particular notice so that they can file a proof of claim and get their requisite percentage of he estate, if any is left. So unless Mrs. Smiltneek was specifically listed as a potential creditor, your liability wouldn't be extinguished. So the chances are, it's either you or it's GMAC that's liable.

For example, if the money and all the legal title had transferred to GMAC and they didn't give her a warranty because they felt you owed them money, they can't do that. As long as the requisite steps were met to trigger the warranty, the fact that you had other outstanding debts to GMAC doesn't give them the right not the extend her warranty. I mean, this is pretty crystal clear. It's just a matter of, you know, where in the process did the money go. How far along had it gone. And, basically, the most important piece of evidence here would be your microfilm copy of this check.

MS. SMILTNEEK: Okay. All right.

THE COURT: So that will be a very crucial piece of evidence.

MS. SMILTNEEK: Okay. I'll refile then? It that it?

THE COURT: Well, you won't have to pay anymore filing fees. You'll just have to add GMAC–you'll have to file an amended complaint adding GMAC as a defendant with mr. Murray and then you'll have to have them served. He's already served. So you'll have to add them as a party defendant.

MS. SMILTNEEK: Okay.

THE COURT: an then we'll have to reschedule it. And if you can, and I would urge you to do that, your–this will be a very important piece of evidence.

MS. SMILTNEEK: Okay. Cause it's included in the price of my car.

THE COURT: Right.

MS. SMILTNEEK: Okay. I'll do that.

THE COURT: Right. All right, any other questions?

MR. MURRAY: I just have one comment I'm going to make here. This –I'm not going to speak on behalf of GMAC, but I'm going to speak on behalf of myself. I have the ability and the right to just go back in and just reopen up a porrtion of this again listing her

specifically and have her served as a dischargeable debt immediately, which I'm gong to do.

THE COURT: Well then, that's your right.

MR. MURRAY: It's my–I'm not going to pay for GMAC. They can do what they want. They've certainly run me through the wringer the last few years, and I have no problem doing that.

I do feel bad for Linda. I mean, she's a pretty nice lady. She bought a car from me in good faith and I'm sorry she has these troubles with this thing after the fact. You know I represented their products and their merchandise for many, many years down there so–

THE COURT: Well, of course, you know, she's given the right–you'll have to notify her and she'll be given the right to object to the reopening of the estate. But those are all options that are available to both parties.

MR. MURRAY: Okay.

THE COURT: All right? All right then, at this time, this matter will be continued as this time.

I'm going to return these times to you then as this time.

MS. SMILTNEEK: Okay. Thank you.

APPENDIX C

Iron Mountain, Michigan

Tuesday, November 2, 1999-at about 8:08am.

THE COURT: All right. At this time we're ready to proceed then with the continuation of the hearing. If the parties would all come forward then at this time.

Mr. Murray and the representative from G.M. should be at that table there (indicating table to Court's right). You can all raise your right hands at this time.

COURT RECORDER: Do you solemnly swear [or affirm] that the testimony you shall give will be the truth, the whole truth, and nothing but the truth, so help you God?

PARTICIPANTS: I do.

COURT: Please be seated. All right, at the earlier hearing here, Ms. Smiltneek produced evidence that she had paid for a warranty by turning money over to LaFreniere Motors at that time operated by Mr. Murray.

At that time Mr. Murray indicated to the Court that he had forwarded the money onto G.M. and that

as far as he knew that there was a warranty in effect.

And, at that time, G.M. Protection was added as Mr. Murray indicates they would be liable. At this point then, we've heard testimony from Ms. Smiltneek, then the third-party complaint will proceed at this time. Ms. Smiltneek then, for the benefit of the new defendant, you're going to have to tell us from the beginning again what occurred here.

MS. SMILTNEEK: Okay. I purchased a '95 Pontiac Grand AM after I had a car accident. I bought it from LaFreniere Motors. At that time, when I bought the car, I purchased an extended warranty for $800. I have proof here where I paid for it, my canceled check now, Judge Kusz. And I never got a warranty. I had a couple problems with my car. I brought it up to Edwards, a local dealer in town, and the warranty was never sent in. Now my car, the mileage, has exceeded the warranty. But this is where I had talked to a lawyer and he told me I should proceed to small claims court.

THE COURT: All right. Mr. Murray then at this time.

MR. MURRAY: I don't really have anything more to add than the last time we were together. But in the spirit of cooperation, due to the bankruptcy involved and the dealership, I am well within my legal rights within the Bankruptcy Code to proceed against harassment charges against Linda. I do have a copy of a decision by the Michigan State District Court here. I don't--when the bankruptcy proceeding was put together-and

that was a decision that was not taken lightly by myself–

THE COURT: Well, one thing, was your--was this obligation listed?

MR. MURRAY: It was not.

THE COURT: Well then there's no way you could bring harassment charges against her. If you didn't list that debt in your bankruptcy, it's not dischargeable.

MR. MURRAY: I've got a decision here by the Michigan State United States District Court for the Eastern District of Michigan simply stating I never intentionally not listed her at all.

THE COURT: Well, the bottom line is, the Bankruptcy Code is very clear. If you don't list them, how can that party be given notice that they have to take steps like, for example, file a proof of claim or take other steps to try to collect" So that's a fatal flaw. If you didn't list that debt in bankruptcy, it can't be discharged. You may--if you had an attorney, you may have a malpractice action against the attorney for not listing that debt, but that is not a protection for you. Now, was the money paid over to a corporate entity, or to a partnership, or to you doing business under an assumed name?

MR. MURRAY: A corporate entity.

THE COURT: All right. And the money was paid over to LaFreniere Motors Inc., or what was the name of the corporation?

MR. MURRAY: That's correct.

THE COURT: All right. And did the corporation file bankruptcy, or did you file bankruptcy?

MR. MURRAY: I filed bankruptcy personally, listing the assets of the corporation as my assets.

THE COURT: But you listed the assets of the corporation?

MR. MURRAY: That's correct.

THE COURT: All right, And you didn't include any debt or obligation to?

MR. MURRAY: No. In fact, it was a no asset claim. There weren't any assets at the end of the road.

THE COURT: Okay. Well, what happened to the $800 that she paid?

MR. MURRAY: The best that I could figure out is that during the proceedings of the bankruptcy, in the last remaining 90 days in business down there, you were billed--Every dealer is billed on a monthly basis, charges incurred by the manufacturer. That includes your parts. That includes the interest on the cars, the floor plan interest of your cars that are sitting on

your lot. Advertising materials. Extended warranties. It all comes under one heading. And at the end of the road, I had--I'd listed General Motors down here on my schedule for a total of an of the money that they were owed for the last 3 months of business and it was all discharged.

THE COURT: Well, did the $800 then get transferred to G.M.?

MR. MURRAY: To the best of my knowledge yes it did.

THE COURT: All right. I guess this is where you come in then at this point. What do the records of G.M. indicate?

G.M. REPRESENTATIVE: Our records indicate, Your Honor, the last --I have all the transactions that we have received from LaFreniere Motors and Linda does not appear on our list. I have --they send us some service contract registration forms that the customer fills out. Then they send us a copy. And that's how we then enter the agreement into our system. And the last one we received from LaFreniere was back on March 24, 1995. And I have a list of all of them by chronological order. And, of course, we did not--never received a copy of her registration form. It starts with '95 and then it goes down to '92 (Hands Court a copy)

And usually the procedure is, Your Honor, that Linda would go to the dealership and talk to the business manager and purchase a service agreement

and then would fill out one of these contract registration forms. And she will indicate which plan she wanted up here (pointing on a form). And then she would--all that information goes here and if there was a lien holder, the lien holder's information, the customer's information, and the price, and so on and so forth. And then she would sign it and get a copy. There's 4 copies here. The original is sent to us. The dealership keeps one. Linda gets one. And if there was a lien holder the lien holder would get a copy. Then once we receive this copy in our office, we then go ahead and register the contract and then we bill the dealership.

THE COURT: But you would only bill a dealership after you receive it?

G.M. REPRESENTATIVE: After we receive the contract.

THE COURT: Did you fill one of those applications out?

MS. SMILTNEEK: I remember filling one of those out.

THE COURT: And you delivered that to Mr. Murray?

MS. SMILTNEEK: We did this in his office down in Norway. I remember that.

THE COURT: You did it right in his office when you purchased the vehicle?

MS. SMILTNEEK: Right.

THE COURT: And, again, the date of purchase was?

MS. SMILTNEEK: 11th month, the 7th, of '95.

THE COURT: Okay.

G.M. REPRESENTATIVE: Also, Your Honor, we send --after we bill the dealership, we then send Linda our registration card and a copy of the policy in the mail. She would get that in the mail. And, if she doesn't, on the contract registration form, it has a note on the edge here that says if you have not received your card or your copy of the policy within 60 days please call this toll free number. That's another--you know--we never did receive the contract registration so we could never register the policy.

THE COURT: All right. At this time then, Mr. Murray, was it sent down?

MR. MURRAY: To my knowledge, it was.

THE COURT: Well, they did not receive it. Their corporate records indicate that they didn't. So the burden shifts back to you to show that you sent it down.

MR. MURRAY: To my knowledge, it was mailed in along with all the other documents and everything else that was going on. The last day of business down there was 12/31/95. And I honestly don't know where her paperwork went to. The best that I can remember, I sent everything into General Motors.

THE COURT: Okay. But they have indicated their records indicate that they never received it.

MR. MURRAY: I can't speak for those people.

THE COURT: All right. Anything else at this time from either side?

MS. SMILTNEEK: Your Honor, I have that canceled check that you asked.

THE COURT: Right. All right, , the record should reflect then that the check was deposited directly into the LaFreniere Motor Company account and paid to FNB, Norway, for deposit only, Norway Community Credit Union.

All right, that's proof that the money then was in fact received. All right. Anything further?

(No indications of anything further)

THE COURT: All right. Well, of course, the Courts are directed to do substantial justice in small claims. And we have a Plaintiff here who has paid $800 and received nothing for it. And it's clear that this money was in fact turned into LaFreniere Motors, Mr. Murray in person, that the record indicates that the registration documents were never forwarded to G.M. Therefore, there was never an extended warranty that was placed into effect. Therefore, the only finding the Court can make is that the Defendant, Mr. Murray, was either negligent or failed to comply with his

obligations under the agreement to comply. And so, therefore, I'm going to have to hold him liable for this. This is not dischargeable in bankruptcy, as she paid it to you directly and she was not listed as a creditor in the bankruptcy. So at this time, the Court has no option here but to find Mr. Murray liable at this point. All right?

Any questions?

(No one asks any questions)

THE COURT: All right. That will be the decision then of the Court. All right?

MR MURRAY: Your Honor, at this point, what do I -- am I mailed something or what do I-

THE COURT: Well your best options right now are to work out some kind of a payment plan with Mrs. Smiltneek.

MR. MURRAY: Well, I'm not going to. I'm just going to turn it back into my bankruptcy attorney. But is there a document that I'm-

THE COURT: You will be receiving a judgment in the mail.

MR. MURRAY: In the mail? Okay.

THE COURT: All right?

MR. MURRAY: Okay.

G.M. REPRESENTATIVE: Same thing for me, Your Honor, I receive something in the mail?

G.M. REPRESENTATIVE: Okay. Thank you.